

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PEOPLEFLO MANUFACTURING, INC.,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	
	)	
SUNDYNE, LLC, DXP ENTERPRISES, INC. and PUMPWORKS, LLC,	)	Civil Action No. 1:20-cv-03642
	)	
Defendants	)	
	)	Honorable Manish S. Shah
PUMPWORKS, LLC,	)	Magistrate Judge Young B. Kim
	)	
Counter Plaintiff,	)	
	)	
-v-	)	
	)	
PEOPLEFLO MANUFACTURING, INC.,	)	
	)	
Counter Defendant.	)	

**PUMPWORKS, LLC'S SUPPLEMENTAL COMPREHENSIVE ANSWERS TO  
PEOPLEFLO'S INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant-Counter Plaintiff PumpWorks, LLC (“PumpWorks”), by and through its attorneys, as and for its Supplemental Comprehensive Answers to Interrogatories and Requests for production served by Plaintiff PeopleFlo Manufacturing, Inc. (“PeopleFlo”) states as follows:

PumpWorks makes the following objections to the definitions and instructions propounded by PeopleFlo and its general objections. These objections reflect the

communications at PumpWorks include Trey Maxwell, Charles Harvey, J. Skrobarczyk, Dean Murphy, and Stuart Andrews. Persons having such communications at DXP include Skip Giessing.

Documents containing information responsive to Interrogatory No. 13 include the following:

DXP-PW\_001149-1749\_ Weekly Colorado Status Updates

DXP-PW\_02554-2561 12/16/19 Colorado Status Update

DXP-PW\_000884-889 2/10/20 Colorado Status Update

DX-PW\_P00825-830 3/9/20 Colorado Status Update

14. For each and every instance in which PumpWorks claims PeopleFlo materially breached the Development and Supply Agreement, identify and describe the following: (a) the date on which PeopleFlo materially breached the Agreement; (b) the provision of the Agreement that was materially breached; (c) when, who, and by what means of communication the material breach was communicated by PumpWorks to PeopleFlo; (d) each Person from PeopleFlo the material breach was communicated to; and (e) whether or not PeopleFlo cured the breach upon receiving said notice from PumpWorks.

**RESPONSE:** PumpWorks objects to the extent that this interrogatory requests information protected by the attorney-client privilege and/or work product doctrine and joint defense privilege. PumpWorks objects to this interrogatory as overbroad, vague and ambiguous and unduly burdensome such that PumpWorks is not able to provide a meaningful response. Pursuant to a mutually agreeable ESI Protocol, PumpWorks will produce nonprivileged business records located in the Searched Files and the materials that were posted to the platform shared with PeopleFlo pursuant to Federal Rule of Civil Procedure Rule 33(d), which reflect or relate to the information sought in Interrogatory No. 14.

Further answering, pursuant to the Pre-Phase 1 minimum purchase requirements of Section 2 of the Supply Agreement, in March 2018, PumpWorks ordered 101 MCUs (valued at \$333,300) and in June 2018 PumpWorks ordered 100 MCUs valued at \$396,000 and prepaid 90% of the purchase price to PeopleFlo. The two-year Phase I began during the Spring of 2019. Although PumpWorks has until March 2021 to place the minimum order of 200 MCUs for Phase I, by June 2019 it had already ordered 200 MCUs valued at \$567,600. Thus, PumpWorks has ordered at least 401 MCUs, paying no less than \$1,136,000.00 for these MCUs, thus satisfying its minimum purchase requirements for Pre-Phase I and Phase I. To date, by PumpWorks' records, PeopleFlo has only delivered 135 of the ordered MCUs, and has failed to timely deliver to PumpWorks 265 MCUs, in breach of its obligations under Section 2 of the Supply Agreement to fulfill PumpWorks minimum purchase requirements. PeopleFlo has been aware of the undelivered backlog of MCUs throughout both Pre-Phase I and Phase I periods. PeopleFlo also is fully aware that it has retained no less than well over \$600,000 in prepayments associated with the undelivered MCU's even netting out the final payments for the few MCUs received in 2020. On March 30, 2020, PumpWorks reminded PeopleFlo of its lack of full performance of its contractual obligations and sought reasonably demonstrated assurances that PeopleFlo is willing and able to manufacture the backlogged MCUs within 90 days pursuant to Section 3 of the Supply Agreement. PeopleFlo failed to make any such reasonably demonstrated assurances within the 90-day period or any time afterwards. PeopleFlo promised to make MCUs that in all material respects meet "the specifications and requirements of PumpWorks." Supply Agreement §1. As promised by PeopleFlo, one of the most important specifications was that the MCUs' hydraulics matches the Goulds hydraulics. Numerous tests completed by both PeopleFlo and PumpWorks demonstrate that this

specification was not consistently met. These testing results were shared with PeopleFlo throughout the development period and through March 2020. PeopleFlo has never made the necessary adjustments to the design of the MCUs to meet this specification.

Recently, PeopleFlo has refused to respond to PumpWorks' request for shipment of pumps, even when there is a specific need for a potential customer. Instead of accepting its manufacturing obligations under the Agreement for which it has received substantial prepayment, PeopleFlo has told PumpWorks to fill orders out of its inventory. The Agreement is for manufacturing upon order by PumpWorks. PeopleFlo is ignoring its obligations and instead has referred PumpWorks' orders to PeopleFlo's attorneys.

PumpWorks' investigation continues and PumpWorks will supplement its answer to this interrogatory if and when it becomes appropriate to do so.

**1/4/2021 SUPPLEMENTAL RESPONSE:**

Subject to PumpWorks' initial objections, of the documents DXP and PumpWorks have produced thus far, those nonprivileged documents that contain information now known to PumpWorks and responsive to this interrogatory are identified in Exhibit A hereto. PumpWorks also incorporates by reference its responses and supplemental responses to Interrogatory Nos. 6 and 7 above.

**9/24/2021 SUPPLEMENTAL RESPONSE:**

Based on information learned during discovery, to date PeopleFlo has manufactured and shipped **only 148** of the 401 ordered MCUs, and has failed to timely deliver 252, in breach of its obligations under section 2 of the Supply Agreement.

Additional documents containing information responsive to Interrogatory No. 14 include the following

132719-21 1/31/2020 Email T. Maxwell to C. Shafer re Payments

132838-40 1/31/2020 Email T. Maxwell to C. Shafer re Payments

**11/30/21 SUPPLEMENTAL RESPONSE:**

Trey Maxwell had numerous discussions with William Blankemeier and Clark Shafer, during the scheduled weekly status update calls and at other times about the testing of PWA-SL pumps and the consistent failure of the pumps to emulate the Goulds 3196 hydraulics and the need for remedial efforts.

Skip Giessing, who was interested in introducing this product to DXP for distribution, had repeated conversation with either Blankemeier, Shafer or both about the failure of the PWA-SL to match the hydraulics of the Gould 3196 pump. These conversations were ongoing, but became more frequent in 2019 when PeopleFlo expressed an urgency to put the PWA-SL into the market. Giessing also challenged the assertions that the PWA-SL could be priced at a point that would allow it to successfully compete with sealed pumps.

In late 2019 or early 2020, Trey Maxwell became increasingly concerned that PumpWorks had advanced a large pre-payment for MCUs it had ordered from PeopleFlo, but PeopleFlo had consistently fallen behind in shipping the ordered MCUs to PumpWorks and he had telephone discussions at this time with William Blankemeier about his concerns.

In a Power Point presentation that PeopleFlo prepared in advance of the March 24, 2020 meeting with David Little, PeopleFlo acknowledged that it had only delivered 142 MCUs out of the 401 MCUs that PumpWorks had previously ordered in 2018 and 2019. In addition, PeopleFlo also admitted to having accepted over \$700,000 in payments from PumpWorks for MCUs that it had failed to deliver by that date.

An additional document containing information responsive to Interrogatory No. 14 includes the following: DXP-PW\_0198608 Nov. 23, 2020 email from Clark Shafer to Skip Giessing indicating that PeopleFlo refused to supply PumpWorks with additional MCUs.

**3/4/2022 SUPPLEMENTAL RESPONSE:**

PumpWorks supplements its prior responses with this additional information concerning PeopleFlo's various breaches of the Development and Supply Agreement The "Agreement":

**PeopleFlo's Breaches of Sections 1 and 9(a) of the Agreement:**

Section 1 of the Agreement requires PeopleFlo to "engineer and design a magnetic coupling unit . . . for ASME B73.3 single stage ANSI centrifugal pumps based upon the technology described in Pump Devices US Patent No 9,920,764 issued March 2018." The '764 patent discloses that conventional sealed ANSI pumps, such Goulds pumps, can be retrofitted to magnetically driven sealed pumps containing the MCUs. '764 patent, Col. 3:37-54, Col. 12:49-60. To retrofit a conventional sealed pump, such as a Goulds 3196 pump, to a magnetically driven ANSI pump necessarily means that the PWA-SL pump's fluid hydraulics are comparable to the fluid hydraulics of the conventional sealed pump being retrofitted. In conducting comparative pump testing, PumpWorks typically measures certain pump performance criteria, including Total Dynamic Head and pump efficiency at a particular speed, measured at revolutions per minute (rpm).

In Section 9(a) of the Agreement, PeopleFlo "warrants that the MUCs delivered pursuant to this Agreement are of the quality specified, meet the specifications, and are merchantable. PeopleFlo warrants MCUs sold pursuant hereto to be free of defects in material and workmanship for a period of twelve (12) months after the first use of a Pump by Customer, or eighteen months after delivery of a Pump to a Customer by PumpWorks, whichever occurs first."

Consistent with its '764 patent disclosures, PeopleFlo repeatedly indicated that its MCUs would permit pumps containing the MCUs to match the fluid dynamics of conventional sealed pump, particularly Goulds 3196 pumps and/or sealed PWA pumps. (See *e.g.*, PEOPLEFLO\_0000693, 695, 702, 709, PEOPLEFLO\_0004369, 4371, 4375-76, 4394-96; PEOPLEFLO\_0012738, 12743, 12750-51; PEOPLEFLO\_0012925; PEOPLEFLO\_0012954-55; 12972-75; PEOPLEFLO\_0013058. As PeopleFlo manufactured and supplied MCUs in various sizes, PumpWorks comparatively tested the Total Dynamic Head and efficiency of prototypes incorporating the MCUs against the Total Dynamic Head and efficiency data for corresponding (in size) PWA sealed pumps. Such testing data was consistently provided to PeopleFlo in the form of comprehensive data sheets and summarized in emails.

Pumps containing the MCUs failed to match the fluid dynamics of conventional sealed pumps, and therefore are not suitable for retrofitting if their Total Dynamic Head measurements did not fall within a tolerance range of 5% of the guaranteed Total Dynamic Head data for the corresponding (in size) PWA sealed pumps or their efficiency data did not fall within a tolerance range of + or - 3 points of the efficiency data for the corresponding (in size) PWA sealed pumps.

The following pump testing data sheets demonstrate that PWA-SL pumps incorporating the MCUs failed to match target fluid hydraulics, thus showing that the units were not suitable for retrofitting as disclosed in the '764 patent and as PeopleFlo repeatedly promised:

DXP-PW 51868-78, 51853-58, 106757-62, 94265-70, 94271-76, 94277-82, 94283-88, 94289-95, 112064-76, 82237-48, 2443-66, 2419-42, 410-435, 2298-2322, 2396-418, 2371-95, 2347-70, 94295-300, 94301-6, 84472-77, 1783-88, 1807-12, 1831-36, 1813-18, 1771-76, 1801-6, 1819-24, 1927-32, 1879-84, 1855-60, 1903-8, 1909-14, 1885-90, 1861-86, 1837-42, 1915-20, 1891-96, 1867-72, 1843-48, 226822-27, 226846-51, 1921-26, 1897-902, 1873-78, 1849-54, 1825-30,

226912-17, 226906-11, 1939-45, 226924-29, 226930-35, 1957-62, 103590-621, 95357-54, 2132-54, 95716-37, 1963-81, 96110-43, 96367-91, 96865-93, 1982-2007, 98094-99, 98205-38, 2042-74, 98512-17, 2075-2100, 99003-33, 99189-223, 2101-31, 104195-201

The following communications and testing data sheets forwarded to PeopleFlo put PeopleFlo on notice of internal testing showing that PWA-SL pumps incorporating the MCUs failed to match target fluid hydraulics, (and in at least two tests, the unit failed altogether) thus showing that the units were not suitable for retrofitting as disclosed in the '764 patent and as PeopleFlo repeatedly promised.

Documents beginning with Bates Nos. PEOPLEFLO\_0003283, 3287, 3649, 3683, 19625, 15063, 15074, 02286, 02466, 06617, 06619, 06643, 06669, 06031, 06040, 06007, 06016, 05984, 05993, 06182, 06183, 07326, 07327, 05760, 05761, 05896, 05897, 05880, 05890, 07294, 07304, 05712, 05722, 05864, 05874, 06891, 06892, 07190, 07191, 07027, 07028, 06755, 06756, 06875, 06885, 06739, 06749, 07174, 07184, 07011, 07021, 06859, 06869, 06723, 06733, 07158, 07168, 06995, 07005, 06843, 06853, 06707, 06717, 07142, 07152, 06979, 06989, 05848, 05858, 15366, & 15369.

The following documents demonstrate that PWA-SL pumps placed in the field failed, , in violation of PeopleFlo's undertakings in Section9(a), and that PeopleFlo was on notice of each failure:

Documents beginning with Bates Nos DXP-PW\_000605, 821, 1032, 1286, 2155, 2180, & 2602: PEOPLEFLO\_0002658, 2662, 2672, 3080, 3277, 3810, 3811, 3812, 3836, 3859, 3893, 11756, 11945, 12431, 16868, & 16869.

### VERIFICATION

I, George C. (Skip) Giessing, verify under penalty of perjury under the laws of the United States of America that I am the Manager, Vice President of PumpWorks, LLC and authorized to verify the forgoing PUMPWORKS, LLC'S SUPPLEMENTAL COMPREHENSIVE ANSWERS TO PEOPLEFLO'S INTERROGATORIES AND REQUESTS FOR PRODUCTION on its behalf, and that the answers are true and correct to the best of my knowledge, information, and belief.

February 28, 2022

  
George C. (Skip) Giessing